

### **REMARKS**

Claims 1 to 42 are the pending claims being examined in the application, of which Claims 1, 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41 are independent. Claims 1 to 11, 14 to 19, 22 to 36, 38, 39 and 41 are being amended herein. Reconsideration and further examination are respectfully requested.

The Office Action refers to wording used in the claims, i.e., “such that”, “so that”, “thereby”, and contends that the wording does not require a step to be performed or limit a claim to a particular structure, and does not limit the scope of the claims. The Office Action refers to MPEP 2106, § II(C). Without conceding the correctness of the remarks made in the Office Action, the claims have been amended in most instances to remove this wording.

The Applicant acknowledges the Examiner’s return of initialed copies of the PTO-SB08 with the Office Action, which confirm that the art cited in the Information Disclosure Statement (IDS) dated December 8, 2006 has been considered by the Examiner.

The Examiner requests that Applicant “point out which of the numerous prior art [references] are pertinent or relevant to the patentability of the invention as claimed in the instant application.” The Examiner further indicates that it would be advantageous for Applicant to provide a concise explanation of why each prior art reference is being submitted and how it is understood to be relevant. The Office Action includes a quotation and references the MPEP § 609 and 37 C.F.R. § 1.98(b)(5). The quotation used in the Office Action is believed to be taken from MPEP § 609.04(a), which states in part:

Concise explanations (especially those which point out the relevant pages and lines) are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly

relevant to patentability or where a large number of documents are submitted and applicant is aware that one or more are highly relevant to patentability.

In response to the Examiner's request, the Applicant is not aware of any particularly relevant reference from the references cited in the December 8, 2006 IDS. The references cited in the December 8, 2006 IDS were previously-cited in co-pending U.S. patent applications. Each of the co-pending applications are identified in an attachment (referred to as "Attachment A") submitted with this paper. Attachment A identifies each co-pending application by its application serial number, title and filing date. An abstract is also provided for each application. In addition and for each of the co-pending applications, Attachment A provides a listing of the references submitted in the December 8, 2006 IDS which were cited in the co-pending application.

Turning to the rejection of the claims based on art, Claims 1 to 42 are rejected under 35 U.S.C. § 102(e)<sup>1</sup> or alternatively under 35 U.S.C. § 103(a) over "TuneTo.com's Community-Based Internet Music Data Streaming System". The Office Action cites the following four articles, which the Office Action contends provides a detailed explanation of the TuneTo.com system: 1) Shands, Mark, "An Exclusive Interview With Michael Weiss, TuneTo.com" (April 14, 2000), 2) Konig, Bill, "The College Music Journal Names TuneTo.com, CMJ Website of the Week (April 12, 2000), 3) Alvear, Jose, "Q&A With Tim Bratton, President of TuneTo.com" (November 23, 1999), and 4) Smotroff, Mark, "TuneTo.com Seals \$2.6 Million

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<sup>1</sup> Since 35 U.S.C. § 102(e) concerns an application for patent and none of the references cited in the grounds for rejection are applications for patent, it is assumed that the Examiner intended to cite another section, e.g., 35 U.S.C. § 102(a). If this is not the case, the Examiner is requested to provide further clarification, should the rejection be maintained in the next Office Action.

Series A Funding”, (January 18, 2000). Reconsideration and withdrawal of the rejections are respectfully requested.

The Office Action relies on four different references to reject the claims under 35 U.S.C. § 102 rejection. It is respectfully submitted that to anticipate a claim under 35 U.S.C. § 102, a reference must teach each and every element of the claim, and that a claim is anticipated only if each and every element set forth in the claim is found in a single prior art reference. Since the Office Action fails to establish that reliance on multiple references to form a 35 U.S.C. § 102 rejection is proper, the 35 U.S.C. § 102 should be withdrawn. It is further respectfully submitted that the references when taken alone, or in combination (if such combination is even permissible, a fact that is in no way conceded), fail to render obvious the invention of the present claims. Accordingly, the 35 U.S.C. § 103(a) rejection should be withdrawn.

With reference to Claim 1, a method is recited for providing a data stream according to preferences of a community. Each member of the community has associated preferences regarding data stream content, and each member of the community has been determined to have at least one data stream content preference in common. Characteristics of the community members’ preferences are determined to provide determined characteristics, and content is selected for inclusion in an individual data stream according to the determined characteristics of the member community’s preferences regarding data stream content.

The Shands, Konig, Alvear and Smotroff articles consist of press releases which are at best cursory with respect to the topics discussed. The articles fail to provide an enabling disclosure of any of the topics discussed therein, and certainly fail to provide an enabling disclosure of the TuneTo.com system. However, in an effort to respond to the Office Action, the

grounds for rejection are discussed with reference to the articles, as best they can be understood given the information provided.

It is respectfully submitted that none of the references teach, suggest or disclose selecting content for inclusion in an individual data stream according to determined characteristics of a member community's preferences regarding data stream content, and/or selecting the content in accordance with characteristics of preferences of a community whose members are determined to have at least one preference in common. In contrast to the claimed content selection, the TuneTo.com system, as can best be understood from the description provided in the references, focuses on finding a number of pre-existing channels to be presented to a user.

Reference is made to page 4 of the Shands article, wherein the interviewee states that:

“[a]t TuneTo.com, we help listeners actually find their perfect channel by matching them up with one of the thousands of different channels that are being broadcast.”

The single-page Konig article states:

[a] nice TuneTo broadcast feature is the Preset Manager, which allows listeners to actually educate their Receivers as to which type of music and which artists they like or dislike. Registered visitors are asked to rank up to five favorite music genres including urban/rap, indie rock, metal, electronic and many others. Then visitors rate their feelings toward certain artists within a music style on a five-point scale from 'dislike' to 'one of my favorites.' Next listeners type in three favorite artists, click on a find button, and land on a page listing channels that most closely match their music preferences. To become a site member, simply fill out a user registration page requesting standard demographic information.”

Thus, from the Shands and Konig articles, the TuneTo.com system matches a user to a set of pre-existing channels. To aid a user in selecting a pre-existing channel, the Alvear article indicates that the pre-existing channels can include “community-based” channels, however the

term community based is undefined. Such a “community-based” channel may be one of the pre-existing channels presented to the user, if the system determines that the user might enjoy the programming provided by that channel. Aiding a user in finding pre-existing channels to present to a user cannot be said to teach, suggest or disclose the invention of the present claims. Nothing in the Shands, Konig and/or Alvear articles refers teaches, suggests or discloses determining characteristics of the preferences of a community whose members have been determined to have at least one preference in common, and/or selecting content for inclusion in a channel according to the determined characteristics of the community members’ preferences. The references are devoid of any teaching of how the pre-existing channels are programmed, and are thus also devoid of any teaching that such pre-existing channels made up of data streams comprising selected content as claimed.

The Smotroff article has been reviewed and is not seen to remedy the above-noted deficiencies.

None of the cited articles, either alone or in any hypothetical combination (if such combination is even permissible, which is in no way conceded), teach, suggest or disclose, selecting content for inclusion in an individual data stream according to the determined characteristics of the community member’s preferences, let alone determine characteristics of the preferences of a community whose members have been determined to have at least one preference in common and selecting content for inclusion in an individual data stream based on the determined characteristics.

For at least the reasons discussed above, the applied art, when taken individually or in any permissible combination (if one even exists, a fact that is in no way conceded by

Applicants), fails to disclose or suggest the claimed invention. Independent Claim 1, as well as each of the claims that depend therefrom, is therefore believed to be in condition for allowance.

For at least the same reasons stated in connection with Claim 1, independent Claims 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41, as well as the claims that depend from these claims, are believed to be in condition for allowance. Additional elements recited in these claims are also not believed to be taught, suggested or disclosed by the applied art, either alone or in any hypothetical combination (if such combination is even permissible, a point that is in no way conceded).

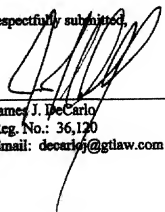
For at least the foregoing reasons, it is respectfully submitted that the stated grounds for rejection of Claims 1 to 42 fail to establish a prima facie case of anticipation under 35 U.S.C. § 102 or obviousness under 35 U.S.C. § 103(a). It is therefore respectfully submitted that the §§ 102 and 103(a) rejections should be withdrawn.

In view of the foregoing, the entire application is believed to be in condition for allowance. Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

In this regard, Applicant's undersigned attorney may be reached by phone at (212) 801-6729. All correspondence should continue to be directed to the below-listed address.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referred when charging any payments or credits for this case.

Respectfully submitted,



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NY v1236374495

U.S. Appl. No.: 09/709/234

Title: INTERNET RADIO AND BROADCASTING SYSTEM

Filing Date: November 9, 2000

Attorney Docket No: 085804-019401

**Abstract:** Data streams are generally selected according to user preferences and transmitted to the user in general alignment with expressed preferences of the user. Such data streams may be audio, video, or other works, such as popular music or the like, or other works, including music videos. Using a large database on the order of tens or hundreds of thousands of songs, users may indicate their general or specific preferences with regards to song, artists, or albums. Other users, particularly ones who access the system often, can act as influencers or controllers of the music transmitted to the user. Any other aspects or factors that might affect the user's preferences can be taken into account, such as popular radio stations in the United States or anywhere in the world. A playlist is created that combines all of these factors, as well as any applicable statutory regulations. The playlist then serves as the basis for feeding the data streams to the user, who is then able to enjoy music generally of his or her choosing, while additionally being exposed to new music (if the user so prefers). An Internet radio is thus established using the expansive and diverse abilities present in the Internet. Each user is able to express his or her own preferences and receive music corresponding to those preferences on an on-going basis. Every individual then is like the manager of his or her own radio station and may broadcast to him- or herself the music that parallels his or her tastes. Other users may also choose to hear the same playlist as another individual, or allow that individual to influence their play list.

**Patent Documents**

<b><u>Document</u></b>			<b><u>Document</u></b>		
<b><u>Number</u></b>	<b><u>Date</u></b>	<b><u>Name</u></b>	<b><u>Number</u></b>	<b><u>Date</u></b>	<b><u>Name</u></b>
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Ian Goldberg, Steven D. Gribble, David Wagner, Eric A. Brewer "The Ninja Jukebox" October 14, 1999

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RealNetworks Literature downloaded from web.archive.org - 16 pages total



U.S. Appl. No.: 10/177,643

Title: CONTROLLABLE TRACK SKIPPING

Filing Date: June 20, 2002

Attorney Docket No: 085804-014504

**Abstract:** A method, system, and computer program product allow users to skip and/or to fast-forward through media items such as songs, while limiting the extent to which skipping is allowed in order to maintain conformance with sound performance complement restrictions such as those specified by the Digital Millennium Copyright Act. If the user requests a skip that may result in a DMCA violation, the skip is disallowed and the request is denied. Playlists are constructed so that the sound recording performance complement limitations are applied to a longer time period than the period specified in the DMCA, the longer time period being defined by adding an "excess time" to the normal DMCA period. If the user attempts to skip a song or song portion that would cause the aggregated skipped amount to exceed the excess time, the skip is disallowed.

#### Patent Documents

<u>Document Number</u>	<u>Date</u>	<u>Name</u>	<u>Document Number</u>	<u>Date</u>	<u>Name</u>
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**U.S. Appl. No.: 09/846,823**

**Title: RELATIONSHIP DISCOVERY ENGINE**

**Filing Date: April 30, 2001**

**Attorney Docket No: 085804-014501**

**Abstract:** A system, method, and computer program product discover relationships among items and recommend items based on the discovered relationships. The recommendations provided by the present invention are based on user profiles that take into account actual preferences of users, without requiring users to complete questionnaires. An improved binomial log likelihood ratio analysis technique is applied, to reduce adverse effects of overstatement of coincidence and predominance of best sellers. The invention may be used, for example, to generate track lists for a personalized radio station.

**Patent Documents**

<b><u>Document Number</u></b>	<b><u>Date</u></b>	<b><u>Name</u></b>	<b><u>Document Number</u></b>	<b><u>Date</u></b>	<b><u>Name</u></b>
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**U.S. Appl. No.: 09/846,823 (Continued)**

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**U.S. Appl. No.: 10/401,940**  
**Title: RELATIONSHIP DISCOVERY ENGINE**  
**Filing Date: March 26, 2003**  
**Attorney Docket No: 085804-014507**

**Abstract:** A system, method, and computer program product discover relationships among items and recommend items based on the discovered relationships. The recommendations provided by the present invention are based on user profiles that take into account actual preferences of users, without requiring users to complete questionnaires. An improved binomial log likelihood ratio analysis technique is applied, to reduce adverse effects of overstatement of coincidence and predominance of best sellers. The invention may be used, for example, to generate track lists for a personalized radio station.

**Patent Documents**

<b><u>Document Number</u></b>	<b><u>Date</u></b>	<b><u>Name</u></b>	<b><u>Document Number</u></b>	<b><u>Date</u></b>	<b><u>Name</u></b>
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**U.S. Appl. No.: 09/848,982**

**Title: TEXT EQUIVALENCING ENGINE**

**Filing Date: May 3, 2001**

**Attorney Docket No: 085804-014508**

**Abstract:** A system, method, and computer program product perform text equivalencing. The text equivalencing is performed by modifying a string of characters by applying a set of heuristics, comparing the modified strings of characters to known strings of characters. If a match is found, the text equivalencing engine performs database update and exits. If no match is found, sub-strings are formed by grouping together frequently occurring sets of characters. An information retrieval technique is performed on the sub-strings to determine equivalent text.

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**U.S. Appl. No.: 10/167,807**

**Title: INFORMATION RETRIEVAL ENGINE**

**Filing Date: June 11, 2002**

**Attorney Docket No: 085804-014503**

**Abstract:** A system, method, and computer program product retrieve information associated with the signals.

The information retrieval can be performed on a signal by quantizing the signal, forming words, and indexing based on weights of the words. The words are formed by grouping letters together to form a number of words within predetermined threshold values. The weights of the words are determined using a binomial log likelihood ratio analysis. The present invention may be applied to identification of an unknown song.

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**U.S. Appl. No.: 10/004,278**

**Title: CONTENT-RELATED WALLPAPER**

**Filing Date: October 30, 2001**

**Attorney Docket No: 085804-014001**

**Abstract:** Improved techniques for enhancing, associating, and linking various sources of metadata for music files, to allow integration of commercially generated metadata with user-entered metadata, and to ensure that metadata provided to the user is of the highest quality and accuracy available, even when the metadata comes from disparate sources having different levels of credibility. The invention further provides improved techniques for identifying approximate matches when querying metadata databases, and also provides improved techniques for accepting user submissions of metadata, for categorizing user submissions according to relative credibility, and for integrating user submissions with existing metadata.

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U.S. Appl. No.: 10/406,799

Title: ASSOCIATING AND LINKING COMPACT DISC METADATA

Filing Date: April 2, 2003

Attorney Docket No: 085804-014401

**Abstract:** Improved techniques for enhancing, associating, and linking various sources of metadata for music files, to allow integration of commercially generated metadata with user-entered metadata, and to ensure that metadata provided to the user is of the highest quality and accuracy available, even when the metadata comes from disparate sources having different levels of credibility. The invention further provides improved techniques for identifying approximate matches when querying metadata databases, and also provides improved techniques for accepting user submissions of metadata, for categorizing user submissions according to relative credibility, and for integrating user submissions with existing metadata.

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U.S. Appl. No.: 10/132,974

**Title: METHOD FOR THE REAL-TIME DISTRIBUTION OF STREAMING DATA ON A NETWORK**

**Filing Date: April 25, 2002**

**Attorney Docket No: 085804-020500**

**Abstract:** A method for sampling of streaming data for distribution on a network (e.g., the Internet) includes receiving the streaming data (which includes periodically updated information items) from a streaming data source. The periodically updated information items of the streaming data are subsequently sampled using a sampling process based on a total update rate of the streaming data ( $U_d$ ) and a capacity of the network (C), thereby creating a sampled data stream. Alternatively, the periodically updated information items of the streaming data can be sampled using a sampling process that is also based on the importance ( $K_{\min}$ ) of each of the periodically updated information items and the update rate ( $U_d$ ) of each of the periodically updated information items to create the sampled data stream. The sampled data stream is then distributed on the network (e.g., the Internet or a private area network).

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**U.S. Appl. No.: 11/117,620**

**Title: FILE SPLITTING, SCALABLE CODING, AND ASYNCHRONOUS TRANSMISSION  
IN STREAMED DATA TRANSFER**

**Filing Date: April 28, 2005**

**Attorney Docket No: 085804-014106**

**Abstract:** Files are divided into parts and at least some of the parts are transmitted to a client using a communication channel. At least some of the transmitted parts are cached locally. This allows subsequent streaming playback of the file while using less bandwidth by transmitting the part of the file that hasn't been cached, and combining the cached parts with the transmitted parts. In some embodiments, files may be represented at a low quality level by a first data set, and at higher quality levels with additional data sets. Data sets are cached locally, so that during subsequent streaming playback of the file, the quality level of the playback may be improved by sending additional data sets using bandwidth that would otherwise be dedicated to transmitting the cached data sets.

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**U.S. Appl. No.: 10/291,210**

**U.S. Patent No.: 7,024,485**

**Title: SYSTEM FOR CONTROLLING AND ENFORCING PLAYBACK RESTRICTIONS  
FOR A MEDIA FILE BY SPLITTING THE MEDIA FILE INTO USABLE AND  
UNUSABLE PORTIONS FOR PLAYBACK**

**Filing Date: November 8, 2002**

**Issue Date: April 4, 2006**

**Attorney Docket No: 085804-014102**

**Abstract:** Files are divided into parts and at least some of the parts are transmitted to a client using a communication channel. At least some of the transmitted parts are cached locally. This allows subsequent streaming playback of the file while using less bandwidth by transmitting the part of the file that hasn't been cached, and combining the cached parts with the transmitted parts. In some embodiments, files may be represented at a low quality level by a first data set, and at higher quality levels with additional data sets. Data sets are cached locally, so that during subsequent streaming playback of the file, the quality level of the playback may be improved by sending additional data sets using bandwidth that would otherwise be dedicated to transmitting the cached data sets.

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**U.S. Appl. No.: 09/780,962**

**Title: SYSTEM AND METHOD FOR DETECTING AND VERIFYING DIGITIZED CONTENT OVER A COMPUTER NETWORK**

**Filing Date: February 9, 2001**

**Attorney Docket No: 085804-019800**

**Abstract:** A system for detecting digitized content and selecting matches from a master verification database. The detection of digitized content is performed using a verification database which contains a master table of contents identifiers and songprints for corresponding digitized content. A network server is programmed to receive selections of a table of contents identifiers from computers, and to request selections of songprint identifiers from the computers and selects matches from the master verification database.

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**U.S. Appl. No.: 09/360,901**

**Title: GEOGRAPHIC DATA LOCATOR**

**Filing Date: July 26, 1999**

**Attorney Docket No: 085804-019900**

**Abstract:** A geographic information transfer method and system is described. The method includes receiving at a host system server data describing a client computer's connection to a computer network, querying a database to obtain geographic data associated with the received data, and transmitting localized information from the host system to the client computer based on the geographic data. A geographic cookie file may be generated and written to a client computer for future use. The geographic cookie file may be used to transmit localized data or to block transmission of data to a specified geographic location.

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